

EXHIBIT B

CARLTON CLARKE June 13, 2008

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

-----X

COPART,

Plaintiff,

- against -

Case No:
C072684 CW

CRUM & FORSTER INDEMNITY COMPANY, UNITED
STATES FIRE INSURANCE COMPANY, and DOES 1-10,

Defendants.

-----X

AND RELATED COUNTERCLAIMS

-----X

Merrill Legal Solutions
25 West 45th Street
New York, New York 10036

June 13, 2008
10:30 a.m.

- Volume I -

DEPOSITION OF CARLTON CLARKE, pursuant to Notice,
taken at the above place, date and time, before Dawn
Matera, a Registered Professional Reporter and Notary
Public within and for the State of New York.

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12:43:22 2 MS. MILLIKAN: That doesn't bother me,
12:43:24 3 but we had to put a page in yesterday.

12:43:26 4 MS. PURI: 15.

12:43:27 5 MS. MILLIKAN: It's in here. I wasn't
12:43:28 6 sure if 15 was the page.

12:43:30 7 MS. PURI: It was.

12:43:34 8 What we're placing in front of the
12:43:36 9 witness is a copy of Exhibit 120 which was
12:43:38 10 marked officially yesterday.

12:43:40 11 We didn't get the exact copy brought
12:43:42 12 over, but I represent that this is a true and
12:43:44 13 correct copy of that Exhibit.

12:43:45 14 MS. MILLIKAN: Just for the record, we
12:43:46 15 have not verified that every page is there,
12:43:49 16 but it appears to me to be a copy of the
12:43:51 17 claim file.

18 (Exhibit 120, Claims File, was
19 previously marked for identification and
12:43:52 20 shown to the witness.)

12:43:52 21 Q. If you look at -- the bottom of the
12:43:56 22 documents are Bates stamped. If you look at
12:44:02 23 CLAIM203.

12:44:02 24 The question I have for you: Is that
12:44:04 25 a copy of the policy that you analyzed when handling

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12:44:08 2 Copart's Hurricane Wilma claims?12:44:23 3 A. This is a Copart policy. And that's12:44:26 4 my handwritten notes, so it would be a policy that I12:44:31 5 saw.12:44:34 6 Q. Is this a policy that you would have12:44:35 7 reviewed in order to determine whether there was12:44:38 8 coverage for the Copart Wilma claims?12:44:40 9 A. Yes.12:44:40 10 Q. I just want to confirm -- I see12:44:42 11 handwriting throughout the documents. I am just12:44:44 12 going to ask you if it's yours. I'm going to flip12:44:49 13 through a couple of pages.12:44:50 14 If you look at 209.12:44:57 15 A. Those would be marks that I would12:44:58 16 make.12:44:58 17 Q. 219?12:45:07 18 A. Yes.12:45:07 19 Q. And then 264?12:45:22 20 A. Yes, that's my handwriting.12:45:24 21 Q. And if you take a look back at 181 --12:45:37 22 that's not the right number. Excuse me, 188. And12:45:43 23 that is outside the policy that we were just looking12:45:46 24 at.12:45:57 25 Mr. Clarke, did you review any

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13:35:27 2 from you, this was -- just for the sake, so we don't
13:35:29 3 have do this every time, Mr. Clarke, you've had an
13:35:32 4 opportunity in preparing for the deposition to look
13:35:36 5 through the electronic claim file notes; correct?

13:35:38 6 A. Yes.

13:35:38 7 Q. Are the claim file notes that indicate
13:35:42 8 you were the author actually authored by you on the
13:35:48 9 dates that are shown?

13:35:48 10 A. Yes.

13:35:48 11 MS. MILLIKAN: On the dates, but not
13:35:52 12 as we noticed yesterday, at 2:42 p.m.

13 14 MS. PURI: Understood. We will agree
14 to that.

13:35:55 15 Q. Looking at the December 16th, 2005
13:35:55 16 entry, under the topic of coverage, you state that
13:36:02 17 "The deductible feature for this account is five
13:36:05 18 percent of the TIV."

13:36:07 19 And then towards the end, you say
13:36:09 20 "Finally, there is one location that does not appear
13:36:12 21 on the Statement of Values; therefore, the deductible
13:36:15 22 applicable to that location is TBD."

13:36:18 23 TBD stands for To Be Determined?

13:36:21 24 A. Yes.

13:36:22 25 Q. So in one of what I think is your

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13:36:27 2 first entry, substantive entries in the electronic
13:36:30 3 claims file notations, you're tying the Statement of
13:36:36 4 Values into calculating the deductible; correct?

13:36:39 5 A. Yes.

13:36:40 6 Q. Nowhere in that entry do you tie the
13:36:42 7 fact that there is no location and in fact there may
13:36:45 8 not be coverage; right?

13:36:46 9 A. Right.

13:36:47 10 Q. So you thought that there could be
13:36:49 11 coverage, even though the location wasn't on the SOV?

13:36:51 12 A. Yes.

13:36:52 13 Q. Why is that?

13:36:53 14 A. Well, the claim hit at the time that
13:36:59 15 the policy was being renewed. And it is a common
13:37:03 16 occurrence that the renewal policy would not have
13:37:07 17 been issued at the time -- at the exact time that the
13:37:10 18 term, that the term states that the policy is in
13:37:13 19 effect.

13:37:14 20 And it is also a common practice that
13:37:16 21 the renewal policy will be issued with the same terms
13:37:21 22 and conditions as the prior policy. So therefore, it
13:37:25 23 is a safe assumption that if the policy is renewed,
13:37:28 24 it will be the same policy as the prior policy.

13:37:31 25 Q. So you were being cautious and waiting

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13:37:33 2 for the renewal to see the new policy to ensure
13:37:35 3 whether or not there was coverage based on the SOV
13:37:38 4 question?

13:37:38 5 A. Right. But I did not want to hold up
13:37:40 6 the adjustment process on that basis, as it would not
13:37:44 7 be fair to the insured.

13:37:45 8 Q. So, in the meantime, until you could
13:37:47 9 confirm one way or the other looking at the correct
13:37:50 10 policy, you wanted to make sure that the claim was
13:37:52 11 getting adjusted?

13:37:53 12 A. Exactly.

13:37:54 13 Q. And that's why you went ahead and had
13:37:56 14 an adjuster start working up the claim?

13:37:58 15 A. Exactly.

13:37:58 16 Q. Why did it take a year to figure out
13:38:06 17 whether or not yard 105 was covered under the SOV?

13:38:09 18 A. Insurance companies are never known
13:38:12 19 for their speed.

13:38:14 20 Q. Are you known for your speed?

13:38:16 21 A. No.

13:38:20 22 Q. Do you think it was fair for the
13:38:23 23 insured to wait a year to figure out that yard 105
13:38:27 24 wouldn't be covered?

13:38:28 25 A. No. It's not fair to the insured.

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13:38:29 2 Q. So in other words, it's unreasonable?

13:38:31 3 MS. MILLIKAN: Objection. Misstates
13:38:32 4 the testimony. You can answer the question.13:38:33 5 A. There is a difference between unfair
13:38:35 6 and unreasonable.

13:38:36 7 Q. What's the difference?

13:38:37 8 A. Unfair is placing the -- placing the
13:38:41 9 person, whoever it may be, at a disadvantage.
13:38:46 10 Unreasonable is basically going, going to an extreme.
13:38:51 11 That's how I interpret it.13:38:53 12 Q. So you don't think making the insured
13:38:55 13 company wait for a year to find out if there is
13:38:58 14 coverage on one yard is unreasonable?

13:39:00 15 A. No.

13:39:01 16 Q. It's not an extreme?

13:39:03 17 A. No.

13:39:04 18 Q. Is there a demarcation in time that it
13:39:06 19 would be extreme? Would two years be extreme?13:39:09 20 A. No, because the insured is represented
13:39:11 21 by an insurance broker, who is professional in the
13:39:15 22 industry. And if they have an issue, they should go
13:39:17 23 to their broker.13:39:18 24 Q. So if it's taking a long time to
13:39:20 25 adjust a claim, the insured's remedy is to go to

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1-10,

Defendants.

-----X
AND RELATED COUNTER CLAIMS

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VOLUME II

CONTINUED DEPOSITION OF CARLTON CLARKE

New York, New York

Friday, July 18, 2008

REPORTED BY: BARBARA R. ZELTMAN
Professional Stenographic Reporter

Job Number: 410521

1 CARLTON CLARKE

2 preparing?

3 A Yes.

4 Q So you went into whatever electronic
5 system and actually put in the policy number,
6 amount of policy, time of loss, date issued,
7 date expires?

8 A Yes.

9 Q And again, we see here the amount of
10 policy at time of loss references 5 million.
11 That's the incorrect policy amount limit,
12 right?

13 A Yes.

14 Q So in January 2007 is it accurate to
15 say you had not reviewed the '05/06 policy.

16 A Yes.

17 Q So the numbers that are now towards
18 the end of this sworn statement and proof of
19 loss, there is a Number 6, 7, 8, 9, those are
20 all numbers that you put in?

21 A Yes.

22 Q And the idea behind this sworn
23 statement is to present it in this draft form
24 to the insured to see if you can agree on the
25 specific numbers; is that right?

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2 THE VIDEOGRAPHER: We're back on

3 the record. Time is 10:56 a.m. This is

4 going to be the start of Tape Number 5.

5 Q Mr. Clarke, we were just talking
6 before the break about the February 2007 time
7 frame and we were looking at an e-mail string
8 between and your bosses at Crum & Forster.

9 Isn't it true that from the
10 beginning of this claim in the fall of
11 2005 through February of 2007, you were
12 analyzing the wrong SOV?

13 A Yes.

14 Q And now in the February 2007 time
15 frame, based on Mr. McCarthy's instruction to
16 hire Butler Pappas, did you go ahead were
17 hire Butler Pappas with respect to the Copart
18 Yard 105 claim?

19 A Yes.

20 Q And in the ensuing few weeks and
21 months, did you have communications with the
22 Butler Pappas firm?

23 A I would assume that I did, yes.

24 Q Sitting here today, you don't
25 remember one way or the other?